IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

WP(C).No. 22792 of 2006(L)

PETITIONER:

SUBRAMANIAN,
S/O. LATE SRI.MANAPPAN ACHARI,
VALIYAPARAMBIL, MARANKULANGARA, EROOR P.O.,
TRIPUNITHURA (VIA) ERNAKULAM DISTRICT.

BY ADV. SRI.M.K.SHASHI KUMAR

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED
BY THE SECRETARY, DEPARTMENT OF HOME AFFAIRS,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR GENRAL OF POLICE,
THIRUVANANTHAPURAM.

3. THE SUB INSPECTOR OF POLICE,
TRIPUNITHURA POLICE STATION,
ERNAKULAM DISTRICT.

4. VINOD, S/O. VELAPPAN SASI,
POOTHARAPPADOM, VYMOOTHY, EROOR P.O.,
TRIPUNITHURA.

R1 TO 3 BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF PETITOIN DT. 12.3.05 FILED BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P2 TRUE COPY OF POSTMORTEM CERFICATE DT. 11.3.05 ISSUED BY THE POLICE SURGEON MEDICAL COLLEGE HOSPITAL, ALAPPUZHA.

EXT.P3 TRUE COPY OF PETITION DT. 28.3.05 SENT BY THE PETITIONER TO THE HON'BLE CHIEF MINISTER.

EXT.P4 TRUE COPY OF THE PETITIOND T. 18.6.05 SENT BY THE PETITIONER TO THE D.G.P. & 1ST RESPONDENT.

EXT.P5 TRUE COPY OF POSTAL RECEIPT RECEIVED FROM THE POST OFFICE FOR DESPATCHING EXTS.P3 AND P4.

EXT.P6 TRUE COPY OF REPRESENTATION DT.2.1.06 BY THE PETITIONER TO THE HON'BLE CHIEF MINISTER THROUGH THE LOCAL M.L.A.

/TRUE COPY/

R. BASANT, J.

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W.P.C.No. 22792 of 2006 L

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Dated this the 11th day of January, 2007

JUDGMENT

The petitioner is the father of a deceased person, who met with his death in the local river. The deceased Kalairaj had earlier won a lottery. His body was found in the river on 10.3.2005. The body was recovered allegedly at about 7.30 p.m. At 8 p.m. his brother-in-law lodged the F.I. statement before the police, in which he made a fairly specific assertion after gathering information that the deceased had committed suicide by jumping into the river from the bridge.

2. Crime was registered under the caption "unnatural death". Investigation/enquiry was conducted. The police, after investigation, came to the conclusion that the deceased had consumed alcohol along with a friend of his, one Vinod. The two were walking by the side of the river. The deceased had got into the river purportedly for washing his hands and face. He had accidentally fallen into the river. Vinod tried to save him. He could not. He made a hue and cry. The local people assembled. They could not save the deceased. His body was not seen. Ultimately after the alleged accidental fall into the river at 3.30 p.m., by 7.30 p.m. the body was

recovered. It is also the case of the police that Fire Force and the Police had reached the scene even before the body was recovered.

3. The postmortem examination was conducted. Final opinion was reserved pending receipt of the Chemical Examiner's report. Without and before the examination report was received, the enquiry was closed and report was submitted to the Sub Divisional Magistrate. The petitioner/father of the deceased has come to this court complaining about the inadequacy in the enquiry.

4. The learned counsel for the petitioner submits that the petitioner really apprehends that there has been foul play in the death of deceased Kalairaj. Kalairaj had won the lottery. He had made some investments. There allegedly was some strain between the deceased and his inlaws. The petitioner apprehends that it is not a case of accidental drowning. Primarily he relies on the contradictory version advanced by the brother-in-law of the deceased in the F.I. statement to justify his apprehensions.

5. I have heard the learned counsel for the petitioner and the learned Public Prosecutor. The Investigating Officer was directed to be present personally. He was present before Court to offer assistance to the Court on vital facts.

6. I shall scrupulously avoid any detailed discussions or observations on the disputes facts, lest it might prejudice the interests of the parties. After having anxiously considered all the relevant inputs, I find the apprehension and suspicion of the petitioner, the father of the deceased, to be well founded. No proper investigation appears to have been conducted. It is not explained how such an F.I. statement as is lodged in this case could have been given by the brother-in-law of the deceased asserting that he had jumped into the river to commit suicide when the final conclusion of the police itself is that it is not a suicide nor jumping into the river from the bridge, but was a case of accidental drowning. Vinod, who was allegedly with the deceased, has stated that the deceased was drowned in the river and he had made a hue and cry, following which the local people had collected and the Fire Force and the police had come to the scene. Curiously the police has not questioned any member of the local community, who had allegedly heard the hue and cry of Vinod or about his version that the deceased had accidentally fallen into the river. Any prudent mind having elementary curiosity must certainly have of course checked the version of Vinod with the version of local persons who allegedly had reached the scene of crime immediately after the deceased

fell accidentally into the river. It is said that the Fire Force had reached the scene. That could have been a safe indication to test the veracity of the version of Vinod that it was a case of accidental falling into the river But no member of the Fire Force is questioned nor is any document of the Fire Force perused.

7. Even after having heard the Prosecutor, who is assisted by the Investigating Officer present in Court, I am satisfied that the elementary curiosity which arises in the matter has not been quenched by the Investigating Officer. Of course, it has been brought to my notice that the subsequent statements of Vinod and statement of the brother-in-law, who lodged the F.I. statement suggest that the brother-in-law had not seen the incident proper and he had collected some information and had given it to the police in the F.I. statement. That possibility cannot be ruled out. But the materials presently available are not sufficient to lay to rest the apprehensions and suspicions entertained by the unfortunate father of the deceased. That the deceased was not in good terms with his father or that the fact that the father/petitioner herein had married again and was not having good relationship with the deceased are not certainly circumstances which can persuade this court to overrule the inadequacies in the

investigation. It is also strange that the investigation has been closed even without and before getting a report from the Chemical Examiner.

8. In short, to sum up, I am satisfied that a proper investigation/enquiry has not been conducted. The matter deserves more detailed and thorough probing. The second respondent is directed to ensure that a senior police official of proven competence and ability is directed to further conduct the investigation in the matter. Necessary steps shall be taken by the second respondent within a period of one month and a report about the action taken shall be made to this Court on or before 31.3.2007.

9. This Writ Petition is accordingly allowed. I may hasten to observe that I have not intended to express any final opinion on the correctness of the conclusion of the police. I have only intended to express the opinion that that conclusion has been reached without sufficient, thorough and proper investigation.

(R. BASANT)
Judge

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